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IN THE

Supreme Court of the United States

October Term, 1959

No. 538

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

ENTERPRISE WHEEL AND CAR CORPORATION.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR ENTERPRISE WHEEL AND CAR CORPORATION IN OPPOSITION

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INDEX

SUBJECT INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	1
STATUTE INVOLVED	3
STATEMENT	3
ARGUMENT	12
I. There is no important question of federal law	12
II. The decision of the court below will not have a severe impact on grievance and arbitration procedures and does not frustrate the purposes and policies of the national labor law	18
III. The decision of this court does not conflict with the decision of the N.L.R.B. in Local No. 611, International Chemical Workers, and the Sixth Circuit decision in N.L.R.B. v. Knight Morley Corporation, on which such board ruling was based	20
IV. The reasoning of the Court of Appeals is not inconsistent with the decision of this court in Vitarelli v. Seaton, Secretary of the Interior	23
CONCLUSION	26

TABLE OF CITATIONS

CASES

Page

Application of States Marine Corp. of Delaware, 127 F. Supp. 943 (DC N.Y. 1954) 13

Arlington Towers Corp. v. John McShain, 150 F.Supp. 904 (DC D.C. 1957) 12, 13

Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation, 348 U.S. 437 (1955) 9

Atchison T. & S. F. R. Co. v. Andrew 211 F.2d 264 (CA 10, 1954) 10

Burchell v. Marsh, 17 How. 344 (1855) 14

Cardenas v. Wilson & Co., 180 F.2d 828 (CA 10, 1950) 16

Elder v. N.Y.C. Ry. Co., 152 F.2d 361 (CCA 6, 1945) 16

Local No. 611, International Chemical Workers, 123 N.L.R.B. No. 182, CCH Labor Law Reporter, Par. 56, 294 (1959) 20, 21

Meadows v. Radio Industries, 222 F.2d 347 (CA 7, 1955) 10

N.L.R.B. v. Highland Shoe Co., 119 F.2d 218 (CCA 1, 1941) 22

N.L.R.B. v. Knight Morley Corp., 251 F.2d 753 (CA 6, 1958) 20, 21, 22

N.L.R.B. v. Reed & Prince Mfg. Co., 118 F.2d 874 (CCA 1, 1941) 22

Odell v. Humble Oil & Refining Co., 201 F.2d 123 (CA 10, 1953) 10, 16

Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152 (1957) 24

Shiels v. Baltimore and Ohio Railroad Co., 154 F.Supp. 917 (DC Ind. 1957) 16

Simmons v. Simmons, 85 W. Va. 25, 100 S.E. 743 (1919) 12, 13

Page

System Federation No. 59 v. Louisiana & A. Ry. Co., 119 F.2d 509 (CCA 5, 1941) 16

Texoma Natural Gas Co. v. Oil Workers International Union, Local 463, 58 F.Supp. 132 (DC Tex. 1943) 12, 14

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 11, 17, 22, 23

Timken Roller Bearing Co. v. N.L.R.B., 161 F.2d 949 (CCA 6, 1947) 20, 21, 22

United Protective Workers Local No. 2 v. Ford Motor Co., 223 F.2d 49 (CA 7, 1955) 10, 16

United Steelworkers v. American Mfg. Co., No. 360 (certiorari granted November 9, 1959) 17

United Steelworkers v. Warrior & Gulf Nav. Co., No. 443 (petition for certiorari pending) 17

United States v. Farragut, 22 Wall. 406 (1874) 12, 14

Vitarelli v. Seaton, Secretary of the Interior, 359 U.S. 535, 79 S. Ct. 968 (1959) 23, 24, 25

Walker v. Pennsylvania-Reading Seashore Lines, 61 A.2d 453 (N.J. 1948) 16

Warden v. Hinds, 163 F. 201 (CCA 4, 1908) 10

STATUTES

Labor Management Relations Act, 1947, Sec. 301(a), 61 Stat. 156, 29 U.S.C. Sec. 185(a) 3, 12, 18

TEXTS

3 Am. Jur., Arbitration and Award, Sec. 41 12

35 Am. Jur., Master and Servant, Sec. 19 10

American Law Institute Restatement, Agency, Sec. 442 10

Williston on Contracts (1937 ed.) Sec. 1359, p. 3815 15

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OPINIONS BELOW

The citations for the opinions below have been presented in the Petition. The opinion of the Court of Appeals and the order modifying it also appear at pages 18 et seq. of the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

The United Steelworkers of America (hereinafter called the Union) requested arbitration when eleven employees were terminated on January 18, 1957, while working under the terms of a collective bargaining contract between the Union and Enterprise Wheel and Car Corporation (hereinafter referred to as the Company or as Enterprise). The Company denied that a grievance subject to arbitration existed. The collective bargaining contract

of one year's duration expired on April 4, 1957, and was not renewed nor was it succeeded by any subsequent agreement between the parties. Four months after the expiration of the contract the Union sued in District Court for specific performance of the contract, alleging jurisdiction under Section 301 (a) of the Labor Management Relations Act of 1947. Resort to the arbitration provisions of the contract were ordered and compliance was had.

The arbitrator on April 10, 1958, determined that while the employees were guilty of improper conduct, discharge was too severe. It was his decision that they should be reinstated with back pay running from date of discharge, beyond the contract termination date until reinstated, less credit to the Company for a disciplinary suspension period of ten days and less further undetermined amounts the men had received from other employment. The District Court ordered compliance with the decision and award of the arbitrator. The Court of Appeals modified the judgment below. It held that the award was invalid insofar as it ordered reinstatement and back pay beyond the termination date of the contract because the arbitrator had exceeded his authority under the contract. That Court also determined that the award was incomplete and ordered further arbitration as to the amounts earned or which should with diligence have been earned in other employment by the grievants.

While petitioner Union is at liberty to delineate the questions in its petition as it sees fit, the respondent Company does not agree that the questions presented by the Union are at issue in this case. When fairly stated the questions are as follows:

1. Whether that portion of the award of the arbitrator ordering reinstatement and back pay for the period after the termination date of the contract was invalid by reason of being in excess of the power and authority vested in the arbitrator under the terms, provisions and limitations of the contract entered into on April 5, 1956, and expiring on April 4, 1957.

2. Whether the Court of Appeals was correct in concluding that the arbitrator imperfectly executed his duties in failing to include in the award the specific amounts which had actually been earned or by the exercise of due diligence could have been earned by the grievants and in ordering that the arbitration be completed as to such amounts.

STATUTE INVOLVED

The pertinent statute, Section 301 (a) of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. Section 185 (a), has been set forth in the Petition at page 3.

STATEMENT

On April 5, 1956, Enterprise Wheel and Car Corporation and United Steelworkers of America entered into a collective bargaining agreement to be in force from April 5, 1956, until midnight on April 4, 1957. (R. 1a-18)[1]. Article III, Section 1, Step 4 of that contract regarding adjustment of grievances provided that in the event a disputed grievance could not be settled by the three step preliminary procedure, then

> "* * * it shall be submitted, at the request of either party, to a panel of three (3) members, one of whom shall be appointed by the Union, one by the Company, and the third member, who shall be an impartial umpire, shall be selected by mutual agreement of the parties. The expenses and salary incident to the services of the umpire shall be paid jointly by the Union and the Company. In the event that a mutually agreeable umpire cannot be selected within ten (10) days after date of notice of desire to appeal to 4th step grievance, either party may request the Federal Mediation and Conciliation Service to furnish the Company and the Union with a list of five (5) qualified and disinterested arbiters. The Company and the Union shall each reject two

[1] The same method of record reference will be used herein as that explained and followed in the Petition at page 1, footnote 1.

of the names thus submitted and the remaining person (or either of the remaining persons) shall be the third member of the panel. The decision of the umpire shall be final and binding on the parties." (R. 1a-16).

Article VIII of the contract recognized that the right to manage the plant and works and to direct the working forces was exclusively with the Company. However, Article IV, Section 1 limited this managerial right in the following manner:

"In the exercise of its rights and duties as set forth in ARTICLE VIII, Management agrees that a member of the Union shall not be peremptorily discharged from and after the date hereof, but that in all instances in which Management may conclude that an employee's conduct, may justify suspension or discharge, he shall be first suspended. Such initial suspension shall be for not more than five (5) work days. During this period of initial suspension the employee may, if he believes he has been unjustly dealt with, request a hearing and a statement of the offense before the Plant Manager with a member or members of the Grievance Committee present as he may choose. At such hearing, all the facts concerning the case shall be made available to both parties. After such hearing, Management shall conclude whether to convert the suspension into discharge, or extend, sustain, or revoke the suspension. If the suspension is revoked the employee shall be returned to employment and receive full compensation at his regular rate of pay for the time lost. If the suspension is sustained, extended, or converted into discharge, the employee may at any time within five (5) working days from the filing of Management's decision, allege and present a grievance to be handled in accordance with the procedure of ARTICLE III.

Should it be determined by the Company or by an arbitrator in accordance with the grievance procedure that the employee has been suspended unjustly or discharged in violation of the provi-

sions of this Agreement the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for the time lost." (R. 1a-17, 18).

On January 18, 1957, the employment of eleven plant employees was terminated because they walked off their jobs by reason of the dispute of another employee with the Company. (R. 2a-19). The dispute of the fellow employee was forgotten, but the Union claimed that the eleven men who had been terminated had a grievance in accordance with the provision of the contract. The Company denied that a grievance existed, insisting that the men had quit, and refused to reemploy them. (R. 2a-20, 21). The answer of the Company refusing the reemployment was taken to be the result which would normally have been obtained in the third step of the grievance procedure outlined in Section 1 of Article III of the contract. The next step in such procedure, or Step 4, provided for arbitration procedure. On April 6, 1957, the Company refused to arbitrate. (R. 2a-9).

A charge of unfair labor practice was filed by the Union before the National Labor Relations Board on July 3, 1957. (R. 2a-10; also opinion of Court of Appeals, Petition, App. 20). The charge before the Board alleged a failure to collectively bargain and a violation of Section 8 (a) 3 of the National Labor Relations Act by reason of discrimination against the eleven men previously mentioned who had claimed that they were wrongfully discharged on January 18, 1957. The Board refused to issue a complaint and the charge was dismissed on August 12, 1957. (R. 2a-10).

Finally, on August 22, 1957, over four months after the collective bargaining contract had expired, the Union instituted an action in the United States District Court for the Southern District of West Virginia seeking specific performance of the labor contract, particularly the arbitration procedure of ARTICLE III, Section 1, Step 4 of the contract. (R. 2a-3; also opinion of Court of Appeals, Petition, App. 20).

The District Court ordered specific performance and pursuant to the Court's order the grievance was submitted under the terms of the contract, to Milton H. Schmidt, for arbitration, the parties agreeing to have only one umpire or arbitrator. (R. 2a-17). Hearing was held before him on January 3, 1958. (R. 2a-27). On April 10, 1958, he rendered what he denominated his "Decision and Award of the Arbitrator." His award is now set out:

"A W A R D

The grievance is allowed as follows:

1. The discharge of each of the grievants which occurred on January 18, 1957, is set aside and reduced to a disciplinary penalty of ten days suspension for each of the grievants. The ten day period is to be calculated from January 18, 1957.

2. The Company shall reinstate each of the grievants who desire reinstatement to the status of employees with their classifications and seniority status as of the date of their discharge, January 18, 1957.

3. The Company shall reimburse the grievants for all time actually lost from work which they would otherwise have had from the Company at the regular rate of pay for each grievant, less the ten day suspension per ... and less such amounts as each has received for other employment since ten days after January 18, 1957.

/s/ Milton H. Schmidt

April 10, 1958" (R. 2a-23, 24).

As we have noted above, the controlling contract which outlined the arbitration procedure to be followed had expired and terminated on April 4, 1957. After that date all of the employees of the defendant who continued to work were without any contract whatsoever and the terms, conditions and rights of the terminated contract were not extended to embrace the period after April 4, 1957. (R. 1a-20; also admission of Union's Counsel, R. 1a-22). Nevertheless, the award of the arbitrator

granted reinstatement of the grievants and also back pay beyond the contract termination date at regular rates, less certain credits for a disciplinary suspension of ten days and less amounts received from other employment. No date was set upon which the reinstatement was to occur, nor was any finding made as to amounts secured in other employment. Neither was a formula provided for determining how amounts received from other employment were to be set off against the amount of money actually lost by reason of the grievants not working. Enterprise immediately asserted the award to be invalid. Yet this notwithstanding, after the award was made, Enterprise while refusing to reinstate the grievants, did offer to pay them, subject to offsets for earnings in other employment, at their regular rate of pay from the end of the ten day suspension period to April 4, 1957, the expiration date of the contract. This offer was refused. (R. 1a-21; 2a-39).

Then much later, on November 25, 1958, the Union filed a motion for Enterprise to show cause why it had not complied with the decision and award of the arbitrator, and also asked, if no good cause be shown, for aid in enforcement of the order of the District Court of October 21, 1957, requiring resort to the arbitration procedure of the contract.

Enterprise filed its answer and resistance to the motion to show cause, alleging that the District Court lacked jurisdiction for the reason that the plaintiff Union was seeking to enforce an arbitration award personal to individual grievants and that the original action ordering arbitration had been finalized when the grievance was submitted, the motion to show cause actually being a new action to enforce the award of the arbitrator. In the alternative, to the merits of the matter, Enterprise asserted that (a) the arbitrator had exceeded the powers vested in him under the terms and limitations of the collective-bargaining contract; (b) that the arbitrator had so imperfectly executed his duties that a final and definite award had not been made; and (c) that the award was not in accordance with law. (R. 2a-26, 27).

Defendant Enterprise further asserted that the collective bargaining contract entered into on April 5, 1956, for one year, had expired on April 4, 1957 and that after the expiration date no contract whatsoever was in effect and the contract had not been extended in any way. (R. 2a-28). The affidavit of Oscar Kraehenbuehl, president of the Company, was filed in support of the answer and resistance of the defendant. (R. 1a-20).

The motion to show cause was heard on December 11, 1958. (R. 2a-29). The Court ordered the defendant to show cause, to which action the defendant objected on the grounds of lack of jurisdiction, as asserted in its answer and resistance. Without waiver of objections as to jurisdiction, it was ordered that defendant's answer and resistance to the motion to show cause and the affidavit of Oscar Kraehenbuehl in support thereof be treated as the answer of the defendant, Enterprise, to the Court's order to show cause. The matter was then submitted on plaintiff's motion to show cause, the order of the Court for defendant to show cause in conformity with said motion, the defendant's answer and resistance thereto, the affidavit of Oscar Kraehenbuehl in support of the answer and resistance, and the facts agreed by the parties as shown in the pleadings, exhibits and admissions at the hearing. (R. 2a-29, 30). No testimony of witnesses was taken.

The District Court then held that the defendant Company had failed to show cause for its noncompliance with the decision and award of the arbitrator and rendered judgment on December 16, 1958, ordering forthwith compliance. To all of this defendant objected. (R. 1a-1, 2).

Timely appeal was taken from this judgment to the United States Court of Appeals for the Fourth Circuit. The issues on appeal presented by the appellant Company were as follows:

"I. Did the district court lack jurisdiction over the subject matter of the show cause proceeding for the reason that plaintiff Union sought

to enforce an arbitration award personal to individual grievants.

"II. Could plaintiff seek to enforce the award of the arbitrator by a motion to show cause under the order to arbitrate of October 21, 1957, since that was a final order which was complied with by submission of the grievance involved to arbitration.

"III. If the district court did not lack jurisdiction over the subject matter, should the decision and award of the arbitrator of April 10, 1958, be vacated as being illegal and void because

(A) the arbitrator exceeded the power vested in him under the terms, provisions and limitations of the contract entered into on April 5, 1956, expiring on April 4, 1957;

(B) the arbitrator by his award so imperfectly executed his duties that a final and definite award upon the matter submitted was not made; and

(C) the arbitration award is contrary to law." (Appellant's brief and appendix below 4, 5).

The Court of Appeals rejected the Company's contention that the District Court lacked jurisdiction over the subject matter of the suit because it was brought by the Union to enforce the personal rights of individual employees. The argument on this point was held not tenable under the decision in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation*, 348 U.S. 437 (1955).

However, the court determined that the award of the arbitrator exceeded the power vested in him and went beyond the scope of the arbitration agreement in ordering reinstatement and in ordering back pay for the period after the termination date of the contract. The Court concluded, on the basis of well settled authority, that

"**** collective bargaining agreements do not create a permanent status or condition, or give an indefinite tenure, or extend rights created and arising under the contract beyond its life, but that these rights remain in force only for the life of the contract unless renewed by subsequent contract or preserved by statute." (Opinion of Court of Appeals, Petition, App. 23).

In scrutinizing the contract the Court said:

"The rights which the employees derived from the 1956-57 labor contract are not open to doubt. While it was in effect they could not be discharged without cause, but after it had expired their hiring was merely for an indefinite period which created an employment that either party might terminate at any time. *Meadows v. Radio Industries*, 7 Cir., 222 F.2d 347, 349; *Atchison T. & S. F. R. Co. v. Andrew*, 10 Cir., 211 F.2d 264, 265; *Warden v. Hinds*, 4 Cir., 163 F. 201; 35 Am. Jur., *Master & Servant*, Sec. 19 (pp. 457-58); American Law Institute Restatement, *Agency*, Sec. 442. The same principle is applied where a contract of employment contains a provision allowing termination after a period of notice has been given. In such cases damages for wrongful discharge are limited to the notice period since at the expiration of the period the right of the employer to discharge the employee is unrestricted. See *United Protective Workers v. Ford Motor Co.*, 7 Cir., 223 F. 2d 49, 52; *Odell v. Humble Oil & Refining Co.*, 10 Cir., 201 F.2d 123, 128, cert. den. 345 U. S. 941. It follows that in the pending case the discharged men had no right to damages for loss of time under the contract after its expiration and that the award should be amended so as to eliminate damages based on the subsequent period. This can easily be done without invalidating the entire award." (Opinion of Court of Appeals, Petition, App. 23, 24).

The Court, citing decisions of the Supreme Court, pointed out that the prevailing view is that even if

the award exceeds the scope of the arbitration agreement it is not invalid in toto but only so far as it is excessive, if it is of such character that a court can separate the part within from the part beyond the submission. (Opinion of Court of Appeals, Petition, App. 21, 22). In accordance with this concept the valid portion of the award was allowed to stand and the judgment of the District Court was modified so as to admit the requirement that the Company comply with the award of the arbitrator insofar as the award required the reinstatement of the discharged employees and the recovery of wages for loss of time was limited to the period of the contract.

The Court also found that the award was incomplete and indefinite because the arbitrator failed to include in the award the amounts which had actually been earned or by the exercise of due diligence could have been earned by the grievants in other employment. The Court showed that it has generally been held that a final award must be certain in its terms or provide means and data by which it may be made certain by mathematical calculation and that if it is deficient in this respect it must be vacated since the powers of the arbitrator are exhausted and the award cannot be resubmitted to him for correction or amendment. Nevertheless, it was felt that the rule forbidding the resubmission should not be applied in the settlement of employer-employee disputes. In consonance with the Supreme Court's direction in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 (1957) that the federal courts fashion a federal substantive law in accordance with the national policy favoring arbitration, the Court ordered that the parties complete the arbitration so that the amounts due the grievants for loss of time could be definitely ascertained. (Opinion of the Court of Appeals, Petition, App. 24, 25).

The Union then filed a petition for rehearing advancing substantially the same reasons that it now urges upon this Court for granting certiorari. The petition for rehearing was denied.

ARGUMENT

I. There is no important question of federal law.

In a futile endeavor to create an important question for Supreme Court determination the petitioner Union asserts that the all-engrossing inquiry here is the extent to which a federal court may or should review the merits of an arbitrator's award when it is asked to enforce such award under Section 301 of the Labor Management Relations Act. (Petition 7). But this is a spurious issue. No such question is involved in this case and no amount of clever semantics will give it substance.

The Court of Appeals has not by any stretch of the imagination reviewed the merits of the controversy which was the subject matter of the arbitration. The principal question at issue was whether the arbitrator acted within the scope of his authority. The merits of the award were never considered. The Court of Appeals accurately applied uniformly accepted and long established principles of the law of arbitration. There was nothing new, startling, or controversial about the legal principles it applied. And there is no undetermined question of law present.

Nothing is better settled in federal or state law than that principle which holds that an arbitrator cannot go outside of the authority afforded him under the contract of submission. *United States v. Farragut*, 22 Wall. 406 (1874); *Arlington Towers Corp. v. John McShain*, 150 F.Supp. 904, 923 (DC D. C. 1957); *Texoma Natural Gas Co. v. Oil Workers International Union, Local 463*, 58 F.Supp. 132 (DC Tex. 1943), aff. 146 F.2d 62, cert. den. 324 U. S. 872, rehearing den. 325 U.S. 893; *Simmons v. Simmons*, 85 W. Va. 25, 100 S.E. 743 (1919). In 3 Am. Jur., *Arbitration and Award*, Sec. 41, it is pointed out that

> "* * * it is for the court, not the arbitrators, to decide whether the latter have exceeded their powers under the submission or have refused to

> exercise them, for since the submission is the foundation of the arbitrators' jurisdiction, their construction of it with respect to their own powers, unless clearly pursuant to its terms, is not conclusive."

State and federal common law decisions and decisions under the Federal Arbitration Act clearly buttress this conclusion and aptly demonstrate the universal lack of discord on the point.

In *Simmons v. Simmons*, 85 W. Va. 25, 100 S.E. 743, 746 (1919) it is stated that

> "* * * nothing is better settled in this state or elsewhere than that arbitrators cannot go outside of the order or contract of submission, and that their award beyond the submission, is absolutely void and of no effect. (Citations omitted)."

Similar law has been enunciated under the Federal Arbitration Act. Title 9 U.S.C. Judge Tamm speaking in *Arlington Towers Corp. v. John McShain*, 150 F Supp. 904, 923 (DC D.C. 1957) has held that

> "*Although the Arbitration Agreement specifically provides that the award of the Arbitrator shall be final and binding, that neither party will contest such findings and that neither party will appeal from any portion of the final judgment, there appears to be no doubt but that the plaintiffs are within their rights in challenging the Arbitration award, particularly on the grounds that the Arbitrator exceeded his authority* and upon the grounds of fraud, bias and prejudice." (Italics ours).

Again, under the Arbitration Act, in *Application of States Marine Corp. of Delaware*, 127 F. Supp. 943, 944 (DC N.Y. 1954) it was held that if arbitrators determine a matter not within the terms of the arbitration agreement

or fail to determine matters within the terms of such agreement, they have "exceeded or imperfectly executed their jurisdiction, and their award should be vacated."

In *Texoma Natural Gas Co. v. Oil Workers International Union, Local 463*, 58 F. Supp. 132, 146 (DC Tex. 1943), aff. 146 F. 2d 62, cert. denied 324 U.S. 872, rehearing denied 325 U.S. 893, it is pointed out:

> "* * * If the matters determined are not within the terms of the submission (i.e. within the arbitration provisions of the contract), or the arbitrators in making their award go beyond the contemplation of the parties, as reflected in the contract, they obviously exceed their jurisdiction and their award may be set aside in an appropriate proceeding."

Consequently, it is seen that the contract from which the arbitrator gains his authority circumscribes and delimits his activities to those matters and things which are within the scope of the contract.

Likewise, the Supreme Court, itself, long ago held that expressions in the submission agreement saying that the award shall be final and conclusive cannot operate to give effect to an award which does not conform to the submission. *United States v. Farragut*, 22 Wall. 406 (1874). Even the case of *Burchell v. Marsh*, 17 How. 344, 349 (1855) erroneously relied upon by the Union at page 8 of its Petition explicitly proclaims that the award must be within the submission in order to preclude court review.

The particular grievance involved in the arbitration now before the Court occurred on January 18, 1957. The bargaining contract under which arbitration was had, by its very terms was of one year's duration. (R. 1a-18). It expired on April 4, 1957 at midnight. It had no renewal clause and was not renewed. After April 4, 1957, there was no agreement of any kind between the company and the employees or their Union. (R. 1a-20, 21, 22).

With the termination of the contract, all job security rights ceased. Any employee continuing to work after the termination date could have been discharged with or without cause. The only protection afforded was that there could be no discrimination as defined under the Labor Management Relations Act and there is no question of any such discrimination in this case. Yet the arbitrator on April 10, 1958, long after the contract had expired, not only awarded back pay from discharge to the termination date but also awarded reinstatement and back pay beyond the termination date continuing until reinstatement was to occur.

Under the general law of arbitration the arbitrator exceeded his authority and by his award improperly modified and enlarged upon the provisions of the contract by erroneously granting the eleven grievants back pay and reinstatement beyond the contract period, on a theory that they had employment security rights continuing even beyond the expiration of the collective bargaining contract. (R. 2a-23). Since the contract had terminated at the time of arbitration, only monetary compensation for loss of pay from the date of discharge on January 18, 1957 to April 4, 1957, the termination date of the contract, could be awarded. All rights of the grievants arose from the contract and they were guaranteed protection from discharge without cause only until April 4, 1957.

The absence of an important question is further emphasized by the fact that the conclusion of the Court of Appeals that that portion of the award granting reinstatement and back pay for the period after the expiration of the contract was invalid is correct and is sustained by good authority.

It is beyond question that damages for wrongful discharge under a collective bargaining contract are limited to the period ending with the earliest date on which the employee could lawfully be discharged. See Williston On Contracts (1937 ed.) Sec. 1359, p. 3815; *United Protec-*

tive Workers Local No. 2 v. Ford Motor Co., 223 F.2d 49 (CA 7, 1955); *Odell v. Humble Oil & Refining Co.*, 201 F. 2d 123 (CA 10, 1953) and cases cited therein.

From this it will be seen that lost wages can only be awarded to the earliest possible date on which the contract could be legally terminated. In our case we find that the earliest possible date upon which the grievants could have been rightfully terminated, assuming good conduct on their part, was April 4, 1957, the expiration date of the contract. Therefore, loss of wages can run only until that date and there can be no reinstatement. It is manifest that no recovery could be had for damages for unlawful discharge arising after the termination date of the contract or after the date when the contract could have been effectively terminated by the employer.

It is well settled that collective bargaining agreements do not create a permanent status, give indefinite tenure or extend rights created and arising under the contract beyond its life when it has terminated. See *System Federation No. 59 v. Louisiana & A. Ry. Co.*, 119 F.2d 509, 515 (CCA 5, 1941), cert. den. 314 U.S. 656; *Elder v. N.Y.C. Ry. Co.*, 152 F.2d 361 (CA 6, 1945); *Cardenas v. Wilson & Co.*, 180 F.2d 828 (CA 10, 1950); *Shields v. Baltimore and Ohio Railroad Co.*, 154 F. Supp. 917, at 925 (DC Ind. 1957) and cases therein cited; *Walker v. Pennsylvania-Reading Seashore Lines*, 61 A.2d 453, 462 (NJ. 1948). The rights of the parties herein were fixed by the contract and ended when it ended. After its termination, those who remained in the employ of the defendant Enterprise or who were hired afterwards held no rights under the contract because it was not extended or renewed nor was there any other collective bargaining contract or agreement entered into between the Company and the plaintiff Union. (R. 1a-20; also admission of Union Counsel, R. 1a-22). The grievants, as has been pointed out in *System Federation No. 9 v. Louisiana & A. Ry. Co.*, 119 F.2d 509, 515 (CCA 5, 1941), cert. den. 314 U.S. 656.

> "* * * could not, because the contract had been breached as to them, claim that the breach had extended its life, so as to entitle them to time loss and to reinstatement after its abrogation."

Clearly then the Union has conjured a simulacrum. Not only has the Court of Appeals not invaded the arbitrators province, but it has made a correct decision. Moreover, the issue here is not related to the issues, real or imagined, by the Union in such cases as *United Steelworkers v. American Mfg. Co.*, No. 360 (certiorari granted November 9, 1959) and *United Steelworkers v. Warrior & Gulf Nav. Co.*, No. 443 (petition for certiorari pending) wherein arbitration has not yet occurred.

Actually the court below has shown the greatest possible deference to the arbitration process and has striven to uphold the award where it is legally possible to do so. Thus, only a portion of the award has been declared invalid, and the matter of compensation from other employment has been ordered to be resubmitted to arbitration so that the award can be made definite.

There is no question here important to the development of federal law relating to grievance arbitration because the issues of the case are resolved by well recognized and already existing principles.

The Union seems to be suggesting that merely because labor arbitration is concerned, a question for Supreme Court determination is present. If this be true it is difficult to see how the lower Federal Courts can ever be helpful in carrying out the direction of this Court in *Lincoln Mills* to fashion substantive federal law in keeping with national policy encouraging arbitration of industrial disputes. Such reasoning would completely emasculate these lower courts and require that every one of the myriad of litigated arbitration cases would ultimately have to be determined by this Court.

II. The decision of the Court below will not have a severe impact on grievance and arbitration procedures and does not frustrate the purposes and policies of the national labor law.

As a second reason for granting the writ, the union maintains that the decision might impede the operation of grievance and arbitration procedures under collective bargaining agreements by making it "advantageous for an employer to delay settlement of grievances as long as possible, in the hope that by the time they reached arbitration the existing agreement will have expired and awards favorable to the union would not be enforceable." (Petition 11).

This, of course, is a fallacy for it overlooks the fact that the grievants here were granted their full contract rights when they were awarded back pay to the termination date of the contract. The Union is advancing the revolutionary proposal that in a labor arbitration, the arbitrator should always have carte blanche regardless of the limitations and restrictions of the submission agreement. Arbitration can be useful in implementing collective bargaining, but if the courts are to abdicate all rightful authority as the Union asks, the development of the arbitration process will be seriously hampered and agreements to arbitrate will become few and far between.

The Union also ignores that Section 301 of the Labor Relations Act, upon which the action in this case is based, was devised specifically to aid in giving a federal forum for suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting interstate commerce. The Court, in the instant case, has accorded the Union the full benefit of its contract and the Union and the eleven discharged men which it represents, cannot have more. The Union entered into a contract of one year's duration without provision for renewal. If greater and enlarged rights were desired they should have been contracted for. As the Court of Appeals in its opinion has so clearly pointed out:

> "* * * Furthermore, the whole matter is subject to regulation by agreement between the parties which may provide for the continuation of the same contract terms in subsequent labor agreements curtailing the common-law right of the employer to discharge employees without cause." (Petition, App. 24).

This language adequately demonstrates that we are dealing only with rights under a particular contract and that the question presented is limited to this case. In the future it would be a simple matter to provide that the grievance provisions of the old contract would continue in effect while negotiations for a new contract are had.

Most collective bargaining contracts either provide for automatic renewal or else a new contract is negotiated prior to the expiration of the old. In either event the rights of the employee are regarded as continuing. Here the Union failed to obtain a new contract either before or after the termination of the old one. And it asks that rights and privileges be granted just as if the old agreement had not been terminated or as if a similar new contract had come into existence. If the Union allows a contract to be terminated or does not provide for a contract of longer duration, or fails to provide for contingencies that might arise, it cannot complain that federal policy favoring arbitration is thwarted just because the contract has expired.

The implications of the decision in this case are limited to the peculiar circumstances and to the particular contract under scrutiny. There is no frustration of the national labor policy, the policy of encouraging free collective bargaining being fortified rather than frustrated. It seems strange, indeed, that a union which is one of the leading advocates of free collective bargaining should ask that this Court now step in and totally remake a contract openly and fairly derived.

III. The decision of this Court does not conflict with the decision of the N.L.R.B. in Local No. 611, International Chemical Workers, and the Sixth Circuit decision in N.L.R.B. v. Knight Morley Corporation, on which such board ruling was based.

The Union suggests that there is conflict between the Fourth Circuit Court's decision in this case and the decisions reached in *Local No. 611, International Chemical Workers*, 123 N.L.R.B. No. 182, CCH Labor Law Reporter, Par. 56, 294 (1959) and *N.L.R.B. v. Knight Morley Corp.*, 251 F.2d 753 (CA 6, 1958). In the *Chemical Workers* case, it was held that a union unlawfully refused to bargain, by insisting as a prerequisite to reaching agreement on a new contract, that the employer bargain concerning the discharge of two employees and seven strikers. The old contract provided for the arbitration of grievances. The report of the decision which we have studied is not clear as to whether the union sought to negotiate the grievance of the seven strikers outside of the framework of the contract before it expired but it is clear that as to the two employees discharged, the Union, both before and after the old contract expired, sought to avoid the grievance procedure of the contract. The Board held that under the decision of the Sixth Circuit in the *Knight Morley* case, the contractual grievance procedure was the channel for the collective bargaining duty as to grievances which arose under the contract. Since the employer was not obligated to bargain as to such grievance, it was an unfair labor practice for the union to insist on making the grievance part of the negotiations.

In the *Knight Morley* case, the Sixth Circuit had followed its own decision in *Timken Roller Bearing Co. v. N.L.R.B.*, 161 F.2d 949 (CCA 6, 1947) and held that an employer did not commit an unfair labor practice by insisting that a grievance concerning discharge, arising before a contract had expired, should be handled through the grievance procedure of the expired contract rather

than as a part of the negotiations for a new contract. The Union, in the case at hand, now imagines that the decision of the Court of Appeals, when considered in view of the decisions in the *Chemical Workers* and *Knight Morley* cases, impales the Union on the horns of a dilemma which the union propounds as follows: The Union cannot gain reinstatement by arbitration because it cannot enforce the award, but to make reinstatement a condition of a labor contract would constitute an unfair labor practice. The Union says that this so-called dilemma results from the fact that "the Board and the Sixth Circuit say that the remedy is arbitration, not collective bargaining, and the Fourth Circuit says the remedy is collective bargaining, not arbitration." (Petition 13).

We point out that the Union's dilemma is imaginary. First, it is not so that there is absolutely no way in which the employer's wrong can be undone. The employees' injury has been remedied to the full extent of their contract rights in that they have been allowed actual monetary loss up to the expiration date of the contract. They were not entitled to reinstatement. Second, the Union's interpretation of the premise upon which the *Chemical Workers* and *Knight Morley* cases are based is a mistaken one.

The true basis for the holding in the *Chemical Workers* and *Knight Morley* cases is a belief in and a desire to support the sanctity of the collective bargaining contract. In those cases it was not a question of the appropriate way to gain reinstatement. The Sixth Circuit and the N.L.R.B. cannot, by even the most vivid imagination, be said to have held that reinstatement can be allowed even if the agreement has expired. Instead, it was a question as to whether the procedures for handling disputes incorporated in a contract derived from the collective bargaining process were to be honored. As is stated in *Timken Roller Bearing Co. v. N.L.R.B.*, 161 F.2d 949 at 955 (CCA 6, 1947), the case upon which *Knight Morley* was based:

> "Though the duty to bargain is absolute, it may be channeled and directed by contractual agreement. N.L.R.B. v. Reed & Prince Mfg. Co., 1 Cir., 118 F.2d 874. There is here no restriction in the contract on the obligation of the petitioner to bargain as in N.L.R.B. v. Highland Shoe Co., 1 Cir., 119 F.2d 218, and the petitioner sought not to curtail the process but to utilize the contractual mechanisms for its prosecution. The law invites, though it may not compel, a collective bargaining agreement. If adjudication bases no sanctions on commitments made therein by the bargaining agent, it imparts futility to a bargaining process hopefully developing in the interest of industrial peace. If the law penalizes one party to the contract for standing on a bargain not itself violative of law, there may still be compulsion to bargain, but the virtue of agreement vanishes. *It may well be that industry will concede much for a no-strike convenant and orderly grievance procedures. It may also result that it will concede little for promises, the performance of which may be insisted upon only at the risk of condemnation for unfair labor practices. The law, we think, does not compel such result.*" (Italics ours).

It will be seen that in the *Timken* and *Knight Morley* cases, the duty to collective bargain had been directed through a contractual agreement and the court was there concerned with the effect on future efforts at collective bargaining if the contract should be ignored. The sanctity of the contract was, therefore, protected in order to give substance to the collective bargaining process. Without such protection collective bargaining would be a hollow mockery.

In this case the Court of Appeals has also sought to protect the contract rights of the parties by refusing to extend the employment contract beyond its stated term. There is no conflict between decisions. E en *Lincoln Mills*, which is heavily relied on by the union, is predicated on imparting validity to the collective bargaining contract

by implementing the policy of Congress "which placed sanctions behind agreements to arbitrate grievance disputes ***." See *Textile Workers v. Lincoln Mills*, 353 U.S. 448 at 456 (1957).

IV. The reasoning of the Court of Appeals is not inconsistent with the decision of this Court in Vitarelli v. Seaton, Secretary of the Interior.

The Union maintains that the decision of the court in this case conflicts with the decision of the Supreme Court of the United States in *Vitarelli v. Seaton, Secretary of the Interior*, 359 U.S. 535, 79 S. Ct., 968 (1959). (Petition 14). However, that case is not remotely similar to the instant case on the facts, does not involve a contract, and is permeated with policy considerations regarding procedural rights in security investigations within the administrative department of the national government.

The Union would interpret the result obtained in *Vitarelli* as enunciating a principle of general applicability to all employment to the effect that "when an employee is unlawfully discharged, the appropriate remedy is reinstatement with full back pay, even though his employer could subsequently have discharged him legally, so long as the employer in fact did not discharge him legally." (Petition 16). This is certainly an incorrect over-generalization and the case makes no such holding.

The rights of Vitarelli to reinstatement did not grow out of contract. His was a right established by federal administrative procedure. He was not protected in his tenure by an employment contract or by statute but he was protected by a departmental order of the Secretary of the Interior promulgating administrative rules and regulations prohibiting the discharge of an employee for security reasons unless certain prescribed procedures were observed involving specification of charges, hearing, limitations as to competency and relevancy of evidence, and right to cross-examination.

Before the *Vitarelli* case was decided, it was well established that if dismissal from federal employment is based on a definite administrative procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed and followed. See *Service v. Dulles*, 354 U.S. 363, 77 S. Ct. 1152 (1957). If an attempt is made to discharge a governmental employee in violation of the rules of the administrative department in which he works, such discharge is without effect and his employment continues. Therefore, while the Secretary of the Interior had the right to summarily discharge Vitarelli without reason or cause, he could not do so once he had assigned the reason that national security was threatened by Vitarelli's continued employment. After security reasons were assigned for discharge, termination could be effectuated only after strict compliance with the rules and procedural standards promulgated by the Department of the Interior.

Nevertheless, the department failed to abide by its own rules and standards and Vitarelli's dismissal was of no effect because the charges were not specific, rules relating to relevancy and incompetency were not followed at the hearing, and right to cross-examine was refused. This is a far cry from the instant case where the rights of the eleven discharged men were established for only one year by a collective bargaining contract which was not renewed. In Vitarelli's case, his rights continued until lawfully terminated by the Secretary. They were not created or circumscribed by contract. They could only be terminated by the Secretary and since he had not exercised his summary right to terminate, the employment continued.

Here in our case, the rights were created by the employment contract and ended when it terminated. The Supreme Court, in Vitarelli's case, was not dealing with employment rights created and governed by a collective bargaining contract nor did it purport to do so. It was not concerned with the principle that a collective bargaining contract does "not create a permanent status or condition, or give an indefinite tenure, or extend rights created and arising under the contract beyond its

life, but that these rights remain in force only for the life of the contract unless renewed by subsequent contract or preserved by statute."

There is no conflict in decisions; nor is the reasoning of the Fourth Circuit inconsistent with *Vitarelli*. Here the rights were created and limited by contract. In *Vitarelli's* case, the right, or as it may better be called, the privilege, was preserved and guaranteed by established federal administrative law.

Moreover, it is obvious that the Supreme Court was not attempting to formulate law as to private collective bargaining employment contracts. Its problem was one of a grave reoccurring nature involving a continuing concern for the protection of individual rights and reputations in the loyalty and national security investigation field. Rather serious charges as to Vitarelli's loyalty were impugned and the hearing allotted him in some aspects approached that of an inquisition without the benefit of cross-examination. In the words of Justice Harlan, speaking for the majority at 359 U.S. 535, 79 S. Ct. 968, 974:

> "* * * these indispensable indicia of a meaningful hearing were not observed. It is not an over-characterization to say that as the hearing proceeded it developed into a wideranging inquisition into this man's educational, social, and political beliefs, encompassing even a question as to whether he was 'a religious man'."

As was said by Vitarelli himself, the action of the Secretary fastened a "badge of infamy" upon him which could only be removed by reinstatement.

If the court had permitted Vitarelli's discharge to have been upheld on the basis that the Secretary of the Interior could have, in any event, discharged him summarily without reason at any time even though he did not do so, the result would have been to completely undermine the established principle that administrative officers are bound by the procedures they themselves pro-

mulgate. Thus in any loyalty or security cases where the employment was not protected by contract or statute, the administrator could label the employee a security risk, discharge him, deny a hearing provided for by departmental regulations, and then when the employee complained, say, "so what! I have the right to summarily discharge you in any event."

In such a situation the administrative rules and regulations would be circumvented with impunity, the employee being forced under a cloud of suspicion without the right to defend himself under rules intended to afford administrative procedural fair play. It is clear that the Vitarelli case has a limited application to its own peculiar factual circumstances and was not intended to pronounce law for general application to private collective bargaining contracts. The decision there certainly is not in conflict with the decision in the case at bar.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

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December 15, 1959.

SUPREME COURT OF THE UNITED STATES

No. 538.—October Term, 1959.

United Steelworkers of America, Petitioner, v. Enterprise Wheel and Car Corp.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June 20, 1960.]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioner union and respondent during the period relevant here had a collective bargaining agreement which provided that any differences "as to the meaning and application" of the agreement should be submitted to arbitration and that the arbitrator's decision "shall be final and binding on the parties." Special provisions were included concerning the suspension and discharge of employees. The agreement stated:

> "Should it be determined by the Company or by an arbitrator in accordance with the grievance procedure that the employee has been suspended unjustly or discharged in violation of the provisions of this Agreement, the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for the time lost."

The agreement also provided:

> ". . . It is understood and agreed that neither party will institute *civil suits or legal proceedings* against the other for alleged violation of any of the provisions of this labor contract; instead all disputes will be settled in the manner outlined in this Article III—Adjustment of Grievances."

A group of employees left their jobs in protest against the discharge of one employee. A union official advised them at once to return to work. An official of respondent at their request gave them permission and then rescinded it. The next day they were told they did not have a job any more "until this thing was settled one way or the other."

A grievance was filed; and when respondent finally refused to arbitrate, this suit was brought for specific enforcement of the arbitration provisions of the agreement. The District Court ordered arbitration. The arbitrator found that the discharge of the men was not justified, though their conduct, he said, was improper. In his view the facts warranted at most a suspension of the men for 10 days each. After their discharge and before the arbitration award the collective bargaining agreement had expired. The union, however, continued to represent the workers at the plant. The arbitrator rejected the contention that expiration of the agreement barred reinstatement of the employees. He held that the provision of the agreement above quoted imposed an unconditional obligation on the employer. He awarded reinstatement with back pay, minus pay for a 10-day suspension and such sums as these employees received from other employment.

Respondent refused to comply with the award. Petitioner moved the District Court for enforcement. The District Court directed respondent to comply. 168 F. Supp. 308. The Court of Appeals, while agreeing that the District Court had jurisdiction to enforce an arbitration award under a collective bargaining agreement,[1] held that the failure of the award to specify the amounts to be deducted from the back pay rendered the award unen-

[1] See *Textile Workers v. Cone Mills Corp.*, 268 F. 2d 920 (C. A. 4th Cir.).

forceable. That defect, it agreed, could be remedied by requiring the parties to complete the arbitration. It went on to hold, however, that an award for back pay subsequent to the date of termination of the collective bargaining agreement could not be enforced. It also held that the requirement for reinstatement of the discharged employees was likewise unenforceable because the collective agreement had expired. 269 F. 2d 327.

The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. As we stated in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, *ante*, p. —, decided this day, the arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level—disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements.[2]

[2] "Persons unfamiliar with mills and factories—farmers or professors, for example—often remark upon visiting them that they seem like another world. This is particularly true if, as in the steel industry, both tradition and technology have strongly and uniquely molded the ways men think and act when at work. The newly hired employee, the 'green hand,' is gradually initiated into what amounts to a miniature society. There he finds himself in a strange environment that assaults his senses with unusual sounds and smells and often with different 'weather conditions,' such as sudden drafts of heat, cold, or humidity. He discovers that the society of which he only gradually becomes a part has of course a formal government of its own—the rules which management and the union have laid down—but that it also differs from or parallels the world outside in social classes, folklore, ritual, and traditions.

"Under the process in the old mills a very real 'miniature society' had grown up, and in important ways the technological revolution

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

The opinion of the arbitrator in this case, as it bears upon the award of back pay beyond the date of the agreement's expiration and reinstatement, is ambiguous. It may be read as based solely upon the arbitrator's view of the requirements of enacted legislation, which would mean that he exceeded the scope of the submission. Or it may be read as embodying a construction of the agreement itself, perhaps with the arbitrator looking to "the law" for help in determining the sense of the agreement. A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to

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described in this case history shattered it. But a new society or work community was born immediately, though for a long time it developed slowly. As the old society was strongly molded by the *discontinuous* process of making pipe, so was the new one molded by the *continuous* process and strongly influenced by the characteristics of new high-speed automatic equipment." Walker, Life in the Automatic Factory, 36 Harv. Bus. Rev. 111, 117.

enforce the award. Arbitrators have no obligation to the court to give their reasons for an award. To require opinions[3] free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. This would be undesirable for a well reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement. Moreover, we see no reason to assume that this arbitrator has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration. It is not apparent that he went beyond the submission. The Court of Appeal's opinion refusing to enforce the reinstatement and partial back pay portions of the award was not based upon any finding that the arbitrator did not premise his award on his construction of the contract. It merely disagreed with the arbitrator's construction of it.

The collective bargaining agreement could have provided that if any of the employees were wrongfully discharged, the remedy would be reinstatement and back pay up to the date they were returned to work. Respondent's major argument seems to be that by applying correct principles of law to the interpretation of the collective bargaining agreement it can be determined that the agreement did not so provide, and that therefore the arbitrator's decision was not based upon the contract. The acceptance of this view would require courts, even under the standard arbitration clause, to review the merits of every construction of the contract. This plenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final. This underlines the fundamental error which we have alluded to in *United States Steel-*

[3] See Jalet, Judicial Review of Arbitration: The Judicial Attitude, 45 Cornell L. Q. 519, 522.

workers of America v. *American Manufacturing Co., ante*, p. —, decided this day. As we there emphasized the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

We agree with the Court of Appeals that the judgment of the District Court should be modified so that the amounts due the employees may be definitely determined by arbitration. In all other respects we think the judgment of the District Court should be affirmed. Accordingly, we reverse the judgment of the Court of Appeals, except for that modification, and remand the case to the District Court for proceedings in conformity with this opinion.

It is so ordered.

MR. JUSTICE FRANKFURTER concurs in the result.

MR. JUSTICE BLACK took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 538.—October Term, 1959.

United Steelworkers of America, Petitioner, v. Enterprise Wheel and Car Corp.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[June 20, 1960.]

Mr. Justice Whittaker, dissenting.

Claiming that the employer's discharge on January 18, 1957, of 11 employees violated the provisions of its collective bargaining contract with the employer—covering the period beginning April 5, 1956, and ending April 5, 1957—the union sought and obtained arbitration, under the provisions of the contract, of the issues whether these employees had been discharged in violation of the agreement and, if so, should be ordered reinstated and awarded wages from the time of their wrongful discharge. In August 1957 more than four months after the collective agreement had expired, these issues were tried before and submitted to a Board of Arbitrators. On April 10, 1958, the arbitrators made their award, finding that the 11 employees had been discharged in violation of the agreement and ordering their reinstatement with back pay at their regular rates from a time 10 days after their discharge to the time of reinstatement. Over the employer's objection that the collective agreement and the submission under it did not authorize nor empower the arbitrators to award reinstatement or wages for any period after the date of expiration of the contract (April 5, 1957), the District Court ordered enforcement of the award. The Court of Appeals modified the judgment by eliminating the requirement that the employer reinstate the employees and pay them wages for the period *after* expira-

tion of the collective agreement, and affirmed it in all other respects, 269 F. 2d 327, and we granted certiorari, 361 U. S. 929.

That the propriety of the discharges, under the collective agreement, was arbitrable under the provisions of that agreement, even after its expiration, is not in issue. Nor is there any issue here as to the power of the arbitrators to award reinstatement status and back pay to the discharged employees to the date of expiration of the collective agreement. It is conceded, too, that the collective agreement expired by its terms on April 5, 1957, and was never extended or renewed.

The sole question here is whether the arbitrators exceeded the submission and their powers in awarding reinstatement and back pay for any period after expiration of the collective agreements. Like the Court of Appeals, I think they did. I find nothing in the collective agreement that purports to so authorize. Nor does the Court point to anything in the agreement that purports to do so. Indeed, the union does not contend that there is any such covenant in the contract. Doubtless all rights that accrued to the employees under the collective agreement during its term, and that were made arbitrable by its provisions, could be awarded to them by the arbitrators, even though the period of the agreement had ended. But surely no rights *accrued* to the employees under the agreement after it had expired. Save for the provisions of the collective agreement, and in the absence, as here, of any applicable rule of law or contrary covenant between the employer and the employees, the employer had the legal right to discharge the employees at will. The collective agreement, however, protected them against discharge, for specified reasons, during its continuation. But when that agreement expired, it did not continue to afford rights *in futuro* to the employees—as though still effective and governing. After the agreement

expired the employment status of these 11 employees was terminable at the will of the employer, as the Court of Appeals quite properly held, 269 F. 2d, at 331, and see *Meadows v. Radio Industries*, 222 F. 2d 347, 349 (C. A. 7th Cir.); *Atchison, T. & S. F. R. Co. v. Andrews*, 211 F. 2d 264, 265 (C. A. 10th Cir.); *Warden v. Hinds*, 163 F. 201 (C. A. 4th Cir.), and the announced discharge of these 11 employees then became lawfully effective.

Once the contract expired, no rights continued to accrue under it to the employees. Thereafter they had no contractual right to demand that the employer continue to employ them, and *a fortiori* the arbitrators did not have power to order the employer to do so; nor did the arbitrators have power to order the employer to pay wages to them after the date of termination of the contract, which was also the effective date of their discharges.

The judgment of the Court of Appeals, affirming so much of the award as required reinstatement of the 11 employees to employment status and payment of their wages until expiration of the contract but not thereafter, seems to me to be indubitably correct, and I would affirm it.